

# SENATE BILL REPORT

## ESHB 1141

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As of March 17, 2021

**Title:** An act relating to increasing access to the provisions of the Washington death with dignity act.

**Brief Description:** Increasing access to the death with dignity act.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Rude, Macri, Stonier, Tharinger, Ormsby, Frame, Pollet, Goodman, Peterson, Thai, Ramel, Johnson, J., Bateman, Simmons, Fitzgibbon and Valdez).

**Brief History:** Passed House: 2/25/21, 60-37.

**Committee Activity:** Health & Long Term Care: 3/17/21.

### Brief Summary of Bill

- Allows advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants to perform the duties of a physician under the Death with Dignity Act (act).
- Reduces the required 15-day waiting period between the first and second requests for medications under the act to 72 hours.
- Prohibits health care providers from contractually prohibiting an employee from participating in the act while outside of the scope of employment and not on the employing health care provider's premises.
- Requires hospitals to submit their policies regarding access to end-of-life care and the act to the Department of Health.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** LeighBeth Merrick (786-7445)

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** Washington's Death with Dignity Act. In 2008, voters approved initiative 1000 which established The Death with Dignity Act (act). The act allows terminally-ill adult Washington residents with six months or less to live to request medication they may self administer to end their life. The patient's attending physician is responsible for determining if the patient has a terminal condition. This determination must be confirmed by a consulting physician. If either physician determines the patient may have a behavioral health disorder that impairs the patient's judgment, the patient must be referred for counseling.

To receive the medication, the patient must first make an oral request to a physician, followed by a written request, followed by a second oral request. A 15-day waiting period is required between the time of the first oral request and the second request. At least 48 hours must pass between the patient's written request and writing the prescription. The patient has the option to rescind the request at any time. Once the request has been processed and fulfilled, the medication may be self-administered. Health care providers are not required to participate in the provisions of the act and may prohibit others from participating on their premises. Health care providers may sanction other health care providers for participating, unless the participation occurs outside of the course of employment or involves a provider with independent contractor status. A health care provider participating in good faith compliance with the act is not subject to civil or criminal liability, or professional disciplinary action. The act requires the Department of Health (DOH) to collect and report on certain information about participation in the act. According to the most recent report, in 2018, 267 individuals were dispensed the medication and 203 of these individuals died as a result.

Access to Care Policies. Hospitals must submit to DOH their policies on admissions, nondiscrimination, and reproductive health care along with a form created by DOH in consultation with the Washington State Hospital Association and patient advocacy groups. The form must provide the public with specific information about which reproductive health care services are and are not performed at each hospital. Submitted policies and the form must be posted on the hospital's and DOH's website.

**Summary of Bill:** The health care providers authorized to perform the duties of the act are expanded to include advanced registered nurse practitioners, physician assistants, and osteopathic physician assistants. Patients may select which type of attending or consulting health care provider they prefer, as long as a physician or osteopathic physician serves in one of those roles. A patient's attending health care provider and consulting health care provider may not have a supervisory relationship with each other. The types of providers who may provide counseling to patients under the act are expanded to include independent clinical social workers, advanced social workers, mental health counselors, and psychiatric advanced registered nurse practitioners.

The 15-day waiting period between the first and second oral request for a prescription for medications is reduced to 72 hours. The 72-hour waiting period may be further reduced if

the attending health care provider determines the patient is not expected to survive for 72 hours. The 48-hour waiting period between the patient signing the written request and writing the prescription is eliminated.

The prohibition on dispensing medications by mail or courier is eliminated. Medications may be delivered by personal delivery, messenger service, or the United States Postal Service or a similar private parcel delivery entity. The addressee or an authorized person must sign for the medications upon receipt. In addition to filing by mail, the prescribing health care provider may file prescribing information with DOH by fax or email.

An employing health care provider may not contractually prohibit an employee health care provider from participating in the act while outside of the employment relationship and not on the employing health care provider's premises, including property owned, leased, or under the control of the employing health care provider. The authority for a health care provider to participate in the act while outside of the scope of employment of an employing health care provider who prohibits participation in the act also requires the employee to be at a location not on the employer's premises, including property owned, leased, or under the control of the employing health care provider.

In addition to other access to care policies, hospitals must submit to DOH their policies regarding access to end-of-life care and the act. DOH must post the policies on its website. By November 1, 2021, DOH must develop a form for hospitals to use to provide the public with specific information about which end-of-life services are and are not generally available at each hospital.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: The act was passed into law by a voter-approved initiative with safeguards, but the safeguards have ended up being barriers to people accessing the act. This bill does not change the basics of the law. The bills makes modest changes to address the most significant barriers while maintaining important safeguards. The requirements for a terminally-ill individual to receive the medications remain the same. Legislation was passed last session that would have required University of Washington to study the barriers to accessing the act. The legislation was vetoed due to funding challenges. In lieu of the study, a workgroup of physicians was convened to determine what barriers exist. The 15-day waiting period is a barrier because it is too long for people to have to wait when they have less than six months to live. The majority of terminally-ill patients cannot wait this long. Changing the waiting period to three days will

reduce patient's suffering and adequate amount of time for the patient to make an informed decision. Other states have enacted similar laws to reduce the waiting period. This bill allow patients who choose a nurse practitioner or physician assistant as their primary care provider to access the act. Allowing for the medications to be delivered by mail will modernize the law and will reduce challenges people living in rural areas face with receiving the medication.

CON: This bill strips away the critical safeguards approved by the voters. It does not give patients sufficient amount of time to discuss their choice with family and friends, get a second medical opinion, or even get hospice. Often terminally-ill patients make rash decisions because they are scared, depressed and in pain. Making access to the act easier sends the wrong message about suicide at a time when we are experiencing an increase in suicide. The act goes against the healing role of physicians. Health care providers should be working to save lives instead of ending them. Rather than broadening access to the act, policy should be focused on expanding access to mental health treatment, hospice and palliative care. If a dying patient is suffering, health care providers should be focused on utilizing means to keep the patient comfortable. It is not necessary to change the law. An individual diagnosed as terminally-ill can go on to live several more years with a high quality of life. Many members of the disability community would be eligible under the act and could be greatly impacted by this. A study about the barriers and potential impacts should be completed before this legislation moves forward. We need data and significant representation from people with disabilities and others that would be impacted by this bill. There is no evidence to suggest that these changes to the act are necessary. Since the implementation of the act, participation has continued to increase. The definition for terminal illness has expanded to include illnesses people can live with for years. Many of the patients that are prescribed the medication and end up not taking it, go on to live more than six months. Other state's laws are much stricter.

**Persons Testifying:** PRO: Representative Skyler Rude, Prime Sponsor; Kim Callinan, Compassion and Choices; Dr. Darrell Owens, DNP, ARNPs United of Washington State; Robert Free, End of Life Washington; Roy Graves; Joe Levy; Dan Diaz, TheBrittanyFund.org.

CON: Lydia Fletcher; Sharon Quick, MD, American Academy of Medical Ethics; Shane Macaulay, MD; Darya Farivar, Disability Rights Washington; Richard Doerflinger; Ivanova Smith, SAIL Self Advocates In Leadership; Kathryn Amdahl, Students for Life of America; Sharon Hanek; Megan McDaniel; Karen T.; Sarah Davenport-Smith, Human Life of Washington; Jan Decker; Conrad Reynoldson, Washington Civil and Disability Advocate; Matthew Guiher, Students For Life; Ronita Boullt, Caring With Compassion Community; Sean Graham, Washington State Medical Association; Miles Wiley, Miles Wiley Music; Josiah Cowart, Students for Life.

**Persons Signed In To Testify But Not Testifying:** No one.